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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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THE PEOPLE,

Plaintiff and Respondent,

v.

TREMAIN BUNTUN, SR.,

Defendant and Appellant.

C057830

(Super. Ct. No. SF102471A)

After the trial court denied his motion to suppress the evidence, defendant Tremain Buntun pled no contest to possession of cocaine base for sale in exchange for a state prison sentence of four years with execution suspended and dismissal of the remaining count (sale or transportation of a controlled substance) and allegation (strike prior).

The court imposed the midterm of four years, suspended execution and granted probation subject to certain terms and conditions including one year in county jail.

Defendant appeals. He contends that the trial court erroneously denied his suppression motion. We disagree and will affirm the judgment.

#### FACTS

About 5:20 p.m. on November 16, 2006, several officers from the Stockton Police Department, including Officer Steven Cole, were stopped on Bianchi Road near the railroad tracks talking after having had a car towed. Officer Cole's attention was diverted from the conversation and drawn to loud music emanating from a green car traveling on Bianchi Road about 100 to 150 feet away. Officer Cole recognized the driver, defendant, a Conway Crip gang member, who had previously been arrested for narcotics and a shooting. Defendant turned the music off but Officer Cole got into his patrol car and activated his lights to pull defendant over for a violation of Vehicle Code section 27007.<sup>1</sup> Defendant did not immediately pull over. He continued to drive on Bianchi Road, pulled into the turn lane for Clowes Street, and then pulled all the way over to a parking lot at Bianchi Road and West Lane where he finally stopped. Officer Cole approached the driver's door and saw defendant clenching the steering wheel with three \$5 bills in his left hand and shoving

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<sup>1</sup> Vehicle Code section 27007 provides, in relevant part, as follows: "No driver of a vehicle shall operate, or permit the operation of, any sound amplification system which can be heard outside the vehicle from 50 or more feet when the vehicle is being operated upon a highway, unless that system is being operated to request assistance or warn of a hazardous situation."

something between his buttocks with his right hand. Based on his training and experience, Officer Cole knew that it was very common for people to put drugs in their buttocks. Officer Cole told defendant to get out of the car. Defendant claimed he was trying to get his driver's license. The officer again told defendant to get out, fearing defendant would shove the narcotics into his rectum. After arguing a bit, defendant finally got out. He was nervous and sweating. The officer saw suspected rock cocaine crumbs on the floorboard and seat. Defendant refused the officer's request to conduct a patdown for drugs or guns. The officer explained he would conduct a patdown for weapons for officer safety reasons. In doing so, the officer felt a hard object between defendant's butt cheeks and told defendant that he suspected he had rock cocaine hidden there. Defendant said not to worry because he was not on probation. The officer collected the suspected rock cocaine from the car and then took defendant to the police station to conduct a strip search. After a Valtox test on the crumbs tested positive, a search revealed a plastic bag protruding from defendant's buttocks which fell to the floor when he shook his body. The bag contained 13 individually wrapped pieces of suspected cocaine base, weighing 2.48 grams.

Defense counsel argued that the music was turned off before the officer began to follow defendant so that the purpose of the detention was not to issue a citation. Defense counsel suggested that the officer could not have seen suspected rock cocaine crumbs in the car because it was nighttime. Defense

counsel claimed that the officer did not feel a weapon when he conducted the patdown.

In denying the suppression motion, the court found that it was a valid traffic stop even if defendant had turned the music off, commenting "[t]hat doesn't mean he can't be stopped for a violation that occurred like someone speeding, suddenly slowed down, that doesn't mean you can't stop him." Based on defendant's driving conduct, the officer's experience as a narcotics officer and with defendant, and the officer's observations of defendant's attempting to secrete items between his buttocks, the court determined that the officer justifiably removed defendant from the car. The court concluded that the officer saw the suspected rock cocaine crumbs in the car in plain view and properly conducted a patdown for weapons for officer safety reasons during which the officer immediately determined by the sense of touch that defendant had secreted contraband between his buttocks.

#### DISCUSSION

Defendant contends that the detention was unlawful in that the officer's stop for loud music was a pretext. Defendant does not challenge anything other than the initial stop for the traffic violation. We conclude that the trial court properly concluded that defendant's violation of Vehicle Code section 27007 justified the detention.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where

supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]’ [Citation.]” (*People v. Weaver* (2001) 26 Cal.4th 876, 924.)

“[A] police officer can legally stop a motorist only if the facts and circumstances known to the officer support at least a reasonable suspicion that the driver has violated the Vehicle Code or some other law. [Citations.]” (*People v. Miranda* (1993) 17 Cal.App.4th 917, 926, italics omitted.) “[A]n investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith.” (*In re Tony C.* (1978) 21 Cal.3d 888, 893, citing *Terry v. Ohio* (1968) 392 U.S. 1, 22 [20 L.Ed.2d 889, 906-907].) Where an officer has a legal justification for a traffic stop, it is immaterial that the stop may be a pretext to investigate some other unlawful conduct. (*Whren v. United States* (1996) 517 U.S. 806, 811-813 [135 L.Ed.2d 89, 96-98].) Following *Whren*, *People v. Woods* (1999) 21 Cal.4th 668 disregarded the subjective intent of an officer in evaluating the validity of a search or seizure. (*Woods*, at pp. 678-681.) We consider the facts known to the officer and, based on those facts, whether the officer had a reasonable suspicion that the defendant has committed a traffic offense. (*People v. Rodriguez* (2006) 143 Cal.App.4th 1137, 1148; *People v. White* (2003) 107 Cal.App.4th 636, 641-642.)

As the trial court concluded, the initial detention was lawful. Here, Officer Cole testified that defendant was driving with loud music emanating from the car which the officer could hear from 100 to 150 feet away which was in violation of Vehicle Code section 27007. Defendant did not dispute this testimony. The trial court found Officer Cole's testimony credible. As the trial court noted, as another example, the officer can stop a driver for speeding even if he or she has slowed down prior to the stop. In other words, the officer had reasonable cause to believe a violation had occurred. There is substantial evidence to support the trial court's ruling the initial stop was lawful. Because defendant does not challenge any other portion of the court's ruling on his suppression motion, we will not further discuss the court's ruling.

DISPOSITION

The judgment is affirmed.

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ROBIE, J.

We concur:

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NICHOLSON, Acting P. J.

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MORRISON, J.